

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DUSSEAU FARMS LLC,

Plaintiff,

Case No. 12-12581
HON. GERSHWIN A. DRAIN

vs.

WILBUR-ELLIS COMPANY,

Defendant.

_____/

ORDER DENYING PLAINTIFF'S MOTION FOR RELIEF FROM ORDER AND
PERMISSION TO FILE RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY
JUDGMENT [#28]

Presently before the Court is Plaintiff's Motion for Relief from Order and Permission to File Response in Opposition to Motion for Summary Judgment filed on July 10, 2013. Pursuant to Federal Rules of Civil Procedure 60(b)(1) or 60(b)(6), Plaintiff requests relief from this Court's Order granting Defendant's Motion to Preclude Opposition to Motion for Summary Judgment entered on July 5, 2013. Defendant's Motion was granted because Plaintiff failed to respond to Defendant's Motion for Summary Judgment in the 21-day time frame permitted by Local Rule 7.1(e). In fact, Plaintiff was more than two weeks late by the time Defendant filed its Motion to preclude Plaintiff from responding. Plaintiff also failed to respond to Defendant's Motion.

The basis upon which Plaintiff requests relief is plainly deficient. Plaintiff's counsel states that he accidentally wrote the Response due date as July 21st instead of June 21st. Counsel argues that this constitutes inadvertent mistake under Rule 60(b)(1). In *United*

States v. Foster, Case No. 09-CV-15074, 2011 WL 3497304 (E.D. Mich. July 15, 2011), this Court already rejected that argument. *Foster* noted that the Supreme Court previously rejected the argument that failure to file a response in the time allowed was inadvertent mistake under Rule 60(b)(1). As such, Plaintiff's Motion is DENIED.

SO ORDERED.

Dated: July 25, 2013

S/Gershwin A. Drain
GERSHWIN A. DRAIN
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
July 25, 2013, by electronic and/or ordinary mail.

S/Tanya Bankston
Deputy Clerk